IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.147 OF 1998

Ananda Keru Talap,
R/o Bavachi, Tal Walwa,
District Sangli
(At present in Sangli District
Prison,Sangli) ..Applicant
V/s
The State of Maharashtra ..Respondent.

Mr. Shekhar Ingawale, Advocate for the applicant.
Ms. R. M. Gadhv, APP for the State.

CORAM : J.H. BHATIA, J.

DATE : 8TH MARCH, 2007.

ORAL ORDER

. The applicant has challenged the order of conviction for the office punishable under Section 324 of Indian Penal Code and sentence to undergo S.I.for six months and to pay fine of Rs.500/- awarded by J.M.F.C., Islampur in Criminal Case No.307/1985 and dismissal of appeal by Additional Sessions Judge, Sangli.

2. The prosecution case, in brief, is that the present applicant had assaulted the first informant Ankush Anna Kshirsagar, with a sickle on 17/11/1985 and had caused number of injuries on his back, head, cheek and fingers. Reason for the attack was some dispute

between the two on account of sharing of water for irrigation of their adjoining fields. After the incident, Ankush was taken to the hospital. He lodged report and on the basis of report, Crime No. 126/1987 came to be registered under section 324 of Indian Penal Code at Ashta Police Station. The weapon of the offence was recovered. After the investigation charge-sheet was filed. The accused was put to trial. Before the matter come up for trial, Ankush Anna Kshirsagar had died. On behalf of the prosecution, in all seven witnesses were examined. Relying on the prosecution story and the evidence, learned Magistrate convicted the accused and sentenced him as stated above. The appeal preferred by the present applicant also came to be dismissed. Heard Mr. Ingawale, learned Counsel for the applicant and Mrs. Gadhvi, learned APP for the State. Perused the record and proceeding.

3. At the outset, it may be stated that before the trial could commence, injured Ankush had expired and therefore, his evidence could not be recorded before the Court. P.W. 1 Balasaheb Ramchadnra Kamble and P.W. 2 Shalan W/o Ankush Kshirsagar, claimed to be eye witnesses and they fully supported the prosecution case.

P.W.3 Dr. Jalindar Rokade had examined Ankush and he has issued medical certificate Exh.17. His evidence reveals that Ankush had suffered 7 incised wounds on different parts of the body and also abrasion with swelling on the right arm. Injury Nos. 1 to 7 could be caused by sharp and cutting weapon, like a sickle. P.W. 6 Rajaram is not an eye witness but according to him, immediately after the incident he had seen Ankush with his wife and brother going towards bus stand. As Ankush had suffered bleeding injuries, he asked Ankush, as to what had happened and Ankush told him that the present accused had assaulted him and caused injuries. All these witnesses fully supported the prosecution case. In cross-examination none of them could be shattered.

4. Evidence of P.W. 7 Head Constable Pralhad Pawar, reveals that on 17/8/1987 Ankush Kshirsagar had come to Ashta Police station and lodged a report Exh.14. That report was taken down by Head Constable Pralhad and he registered the offence. He identified the signature of Ankush. He also deposed that Ankush had stated before him that accused had inflicted the injuries on his head, back and chick etc. with a sickle on account of a dispute pertaining to water distribution.

5. Learned Counsel for the applicant contended that in absence of evidence of Ankush himself, the prosecution cannot stand. It is difficult to accept this contention, as Ankush had died before the trial could commence and it was impossible for the state to examine him before the Court. With the evidence of P.W. 7 Pralhad, it was duly proved that said Ankush had lodged report with the police immediately after the incident and on the basis of that report the offence was registered. Not only that he had also told P.W. 6 Rajaram about assault on him within a few minutes after the incident. Evidence of P.W.1 Balasaheb and P.W.2. Shalan, who is wife of Ankush, proved actual incident and their evidence is corroborated by conduct of deceased Ankush in immediately telling P.W. 6 Raghunath, about the incident and in lodging the report at the police station. I do not find any fault with the findings of the Courts below. I find no illegality, irregularity or impropriety in the order of conviction as well as sentence awarded for the offence. There is no merit in the revision.

6. Therefore, revision application stands

dismissed. The applicant shall surrender before the trial Court within three weeks to undergo sentence.

(J.H. BHATIA, J.)